File N°: 2900-08-002 (G-508)

GRIEVANCE
submitted at Level II,
pursuant to section 33 of the
Royal Canadian Mounted Police Act
R.S.C. 1985, c. R-10, as amended

Corporal [redacted] (*Grievor*)
Regimental No. [redacted]

and

Deputy Commissioner, [redacted] Division *(Respondent)*
Royal Canadian Mounted Police

Before
Catherine Ebbs, Chair

May 12, 2011

RECOMMENDATIONS

I recommend to the Commissioner of the RCMP that he allow the grievance, acknowledge that the Grievor was subjected to workplace harassment during the period from 1998-2004, and apologize to the Grievor for the fact that the harassment investigation and decision in his case were inconsistent with applicable policies.

INTRODUCTION

This report pertains to the grievance of Corporal [redacted] (Grievor). His regimental number is [redacted]. The matter arises out of a decision by the Deputy Commissioner, [redacted] Division (Respondent), to reject the Grievor's harassment complaint.

The grievance was denied at Level I and then resubmitted at Level II. As required by subsection 33(1) of the *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10 as amended (*Act*), and section 36 of the *Royal Canadian Mounted Police Regulations, 1988* (SOR/88-361) (*Regulations*), the grievance was referred to the Royal Canadian Mounted Police External Review Committee (ERC). The ERC will provide an independent assessment of the relevant issues prior to their adjudication by the Commissioner of the RCMP. The ERC's findings and recommendations are contained in this report.

In arriving at my recommendation that the Commissioner of the RCMP allow the grievance, I have reached the following primary conclusions:

- all of the material that the Grievor submitted for the first time at Level II is inadmissible;
- the Grievor demonstrated that the incidents he complained of took place;
- the Grievor demonstrated that incidents he complained of represented harassment;
- the Grievor's supervisor did not appear to maintain a harassment-free workplace;
- the Force responded to Grievor's allegations in both positive and negative ways; and,
- the Grievor was clearly prejudiced by the denial of his harassment complaint.

I refer to documents in the record by page number. References in this report to applicable laws and policies relate to the versions that were in place at the time the events relevant to the grievance occurred. It is possible that there have been modifications since that time.

BACKGROUND

In August 1998, the Grievor joined a detachment in [redacted]. The record reveals that from 1998-2004, there was a culture of practical jokes in the detachment. The record speaks of three

separate harassment complaints regarding this time period:

1. In 2003, another member of the detachment filed a harassment complaint, and the Grievor was a witness during the ensuing investigation.

2. In 2006, the Grievor was the subject of a harassment complaint. The record contains little information about this complaint. However, according to the Grievor, *Code of Conduct* allegations in relation to this complaint were dismissed at a Level I appeal.

3. In 2006, the Grievor submitted a harassment complaint. This complaint forms the basis of the present grievance.

The record shows that the Grievor reported his allegations to the Respondent in March 2006 (p.87). The Respondent then ordered that the Grievor be contacted to ensure that all of the concerns he raised were addressed (p.89). This was followed by the Grievor submitting a formal written harassment complaint on April 6, 2006, in the form of an email to his supervisor.

In the email, the Grievor alleged that he was the victim of harassment from 1998-2004. He provided a list of incidents that he stated happened at the detachment, oftentimes more than once (incidents) (pp.108-109):

- the side mirrors on his car were pushed in;
- the windshield wipers on his car were pulled out;
- tape was stuck to his car;
- tape was placed on his office telephone receiver;
- his picture was superimposed on to a photograph of a "*Sunshine Boy*" in a newspaper, following which the photo was attached to a colleague's SUV, and driven around town;
- an image of his face was transposed on to a picture of another member's girlfriend;
- the keys on his office keyboard were re-arranged;
- his office keyboard was unplugged;
- his office keyboard was replaced with a broken keyboard;
- some of his food items were drawn on with a felt pen;

- some of his food items had bites taken out of them;
- his chocolate bar was half-eaten;
- his office chair was soaked with water;
- his office chair was substituted with a defective chair;
- dirty dishes were left on his desk;
- his duty bag was filled with confetti;
- his duty bag was filled with coloured pins;
- flashlight batteries were taken from his duty bag;
- insulting messages were fastened to his computer;
- a page containing a photocopied middle finger was inserted into one of his files;
- pornographic pictures were left in his office, with his name stamped on one of them;
- a member joked about him killing himself;
- a member threatened him with violence;
- a "*handicapped*" sign was positioned in front of his parked car; and,
- a private fax addressed to him was pinned to the coffee room bulletin board.

The Grievor stated that he did not know who was behind most of the incidents. He said that they left him feeling anxious and saddened, and that they eventually caused him to go into "*dry heaves*" before work (pp.109-110). He indicated that the incidents had gone on, even though he had repeatedly made superiors aware of them. He also alluded to the fact that he, himself, was being disciplined for harassment. He further asked questions of management. Some related to his complaint. Some did not (p.73, pp.78-79, p.87, pp.107-110).

An investigator was assigned to conduct a review of the Grievor's harassment complaint. Throughout 2006, he tape-recorded four statements from the Grievor concerning the allegations. He also spoke to 10 witnesses. He drafted an investigation report, dated November 21, 2006, outlining the information he obtained (pp.73-88). He sent his report to the District Commander, who reviewed it. The District Commander prepared a shorter report, dated November 28, 2006, in which he offered his own analysis for the Respondent's consideration. He particularly observed that the Grievor did not file a complaint until he, himself, became subject to discipline for harassment. He opined that the Grievor's delay in complaining made the case difficult to investigate. He concluded that the detachment's environment "*could have inadvertently resulted*

in workplace conflict" (pp.89-93).

The report was also sent to the [redacted] Region Complaints and Administrative Investigative Support Services, as well as to the Human Resources Officer, [redacted] Region, for his review and furtherance to the Respondent (p.14).

Upon his receipt of the file, the Respondent reviewed the investigative materials. He issued a written decision on April 23, 2007. In the decision, he identified the ensuing test for ascertaining if harassment had occurred (pp.14-15):

> *The test to be applied in determining whether the questioned behaviour was offensive is from the perspective of a fully informed employee/manager, similarly situated to the Respondent, who is aware of the Force's Mission, Vision and Values, the appropriate policy statements and directions on the issue of harassment. The question is whether this hypothetical person* ***knew or ought reasonably to have known*** *that the actions were improper and would be unwelcome, and would cause offence or harm* [bold in original].

The Respondent described the incidents as "*troubling*". He nevertheless decided that they did not amount to harassment. His reasoning was three-fold. First, practical jokes were common at the detachment, until the management team changed in 2004, and they were not directed at any one person. Second, the Grievor could not pinpoint those responsible for the incidents. Third, witnesses stated that "*none of the incidents were malicious*" (pp.14-72).

The Respondent added that, in 2003 when the Grievor was a witness in another member's harassment complaint, would have been "an ideal time for [the Grievor] *to voice issues involving himself*". He mentioned that the Grievor did not complain within the time limit set out in the policies relating to harassment complaints. However, this did not seem to be a basis for his denial of the complaint (pp.14-72).

PROCEEDINGS AT LEVEL I

The Grievor submitted a grievance regarding the Respondent's decision to deny his harassment complaint. It was dated May 10, 2007 and received May 16, 2007. In it, the Grievor made the following four arguments (pp.1-2):

- the Respondent failed to properly interpret the definition of "harassment";
- the Force did not let the Grievor review his statements before the Respondent received the investigation report;
- the decision did not fully encompass all of the alleged incidents; and,
- the Grievor was denied an opportunity to clarify the information of other witnesses.

The Grievor contended that the Respondent's decision prejudiced him. Specifically, he said that he: "suffered continued harassment ... [which] *impacted* [his] *health, work, and resulted in extended ODS*". He relied on Treasury Board and RCMP harassment authorities in support of the grievance. He requested redress in the form of an "admission that I was subjected to workplace harassment by various members while [at the detachment]". The Grievor attached a package containing various materials in support of his position (pp.1-138).

The Office for the Coordination of Grievances (OCG) acknowledged receipt of his grievance and also advised him where he could find grievance-related information (p.142):

> [I]*nformation can be obtained in Part III of the* [*Act*]*, Part II of the Regulations, Appendix X-3-25 of the Commissioner's Standing Orders (CSO) and Part II.38 of the Administration Manual, and the Infoweb at the Human Resources, Internal Affairs - grievance site. ... Please feel free to contact me if you require any further assistance. ... Your attention is particularly drawn to the attached document entitled "Role & Responsibilities of the Grievor", which will clarify your role and assist you in resolving this issue.*

In Early Resolution discussions, it was acknowledged that the Grievor should have been allowed to review his statements before the investigation report was finalized, and that the Force should not have made him acquire copies of the statements via the ATIP process. The Grievor and the Respondent did not reach an agreement on the other three grounds. They also disagreed as to how the Grievor's inability to review his statements ought to be remedied. I note that the Grievor did

not seek disclosure under subsection 31(4) of *the Act* (pp.148-153).

The Grievor's Level I submission was attached to his grievance form. He claimed that the Respondent "failed to properly interpret the definition of harassment" (pp.2-14, pp.155-156). He urged that no matter how one described the incidents, he suffered harassment (pp.3-8):

> *Regardless of the terminology used such as practical jokes or Tom Foolery, these actions certainly fall well within the definition of harassment. It is also clear that the complainant was directly targeted. ... Although some other persons in the office were suffering a similar fate, this in no way mitigates or absolves the provisions as laid out by policy and directives.*

The Grievor also argued that the investigation and decision failed to encompass all the incidents listed in his complaint. More specifically, he stated that the Respondent's decision did not address the photocopy of the middle finger inserted into one of his files, the "handicapped" sign positioned in front of his car, or the superimposing of his image on to a "Sunshine Boy" photo (pp.10-11).

The Grievor further asserted that he was wrongly denied a chance to "clarify" information provided by other witnesses before the investigation report was finalized (p.11).

He then made various miscellaneous arguments. Most significantly, he thought it was "grossly unfair" for his own harassment-related disciplinary penalty to have been mentioned during the investigation. In support of all his arguments, he attached the investigation report and decision, harassment authorities and articles, documents about the Force's mission, vision and core values, and other related materials (pp.13-138).

The Respondent filed a submission on August 8, 2007. He stated that "the Grievor's arguments are based on a flawed interpretation of policy and an inaccurate interpretation of the information that was made available to determine if the Grievor was a victim of 'harassment'". He addressed the Grievor's four main positions.

First, he said he properly interpreted the definition of "harassment": "[I] *had to make the*

distinction between disrespectful behaviour and behaviour that constitutes harassment. Based on the evidence and witness statements, the behaviour was deemed not to be harassment" (pp.162-163).

Second, he accepted that the Grievor was denied the right to "review [his] *statement*[s] *as recorded by the investigators, to confirm ... accuracy, prior to the final report being submitted*". Yet he noted that the Grievor did not later cite any errors in the statements. He asked the Level I Adjudicator to determine if the Force's omission fatally undermined the investigation (p.164).

Third, he verified that "[a]*ll of the allegations were reviewed in the writing of the decision*". He justified his choice not to identify a number of incidents by explaining that those particular incidents were either dealt with during other processes, or at other points in time (pp.164-165).

Fourth, he declared that the Grievor did not have the right to clarify the information which other witnesses had provided during the course of the investigation (p.165).

The Grievor offered a rebuttal on August 9, 2007. He claimed that harassment included unwanted displays of pornography, and unwelcome practical jokes. He felt the recordings of his statements were "fatal to the harassment process", as they omitted certain things he said, and needed explanation. Lastly, he suggested that if he was allowed to look at the information of other witnesses, he would have noted that a vital witness was not interviewed (pp.209-213).

The Level I Adjudicator rendered his decision on April 7, 2008 (pp.264-303). He found that all preliminary requirements were met. He then denied the grievance on the merits. He held that the Grievor had not satisfied the burden of persuasion. Specifically, the Grievor failed to ensure that there was sufficient information on the record, and did not make fully documented arguments. The Level I Adjudicator particularly found that he could not reach conclusions because he did not have the original harassment complaint, and did not know the process that was followed prior to the Respondent making his decision (pp.284-287, p.292).

He then stated that if he was wrong in finding that the record was incomplete, he would make the following findings (pp.287-299):

- the Force neither misapplied legislation, nor denied the Grievor procedural fairness;
- the Grievor failed to explain how Treasury Board harassment policy was disregarded;
- the Grievor relied upon an inoperative version of RCMP harassment policy;
- the evidence did not clearly substantiate that the Respondent "misdirected himself when applying the facts to the definition of harassment";
- although the Force breached RCMP policy by making the Grievor obtain his statements through an ATIP request, the Grievor failed to show that this breach was detrimental;
- the Respondent did not have to address every last incident under a separate heading;
- the Grievor offered no proof that he had a right to clarify witness statements; and,
- the Grievor's prior disciplinary sanction for harassment was relevant to the case.

The Level I Adjudicator summed up his alternate analysis by noting that while there were problems with how the complaint was handled, the Grievor had not proven his case (p.300):

> *In reviewing the Record as a whole I am left with serious concerns as to whether the Grievor's harassment complaints were given the consideration and attention required both by RCMP policy and by the concept of procedural fairness. The incompleteness or insufficiency of the Record, however, does not permit me to find that the Grievor has persuaded me on a balance of probabilities that the shortcomings of the investigation resulting in the Harassment Decision are sufficient to find in his favour.*

In the further alternative, the Level I Adjudicator held that although the Grievor had standing, it was unclear how the Respondent's decision was prejudicial. He concluded that if he was still incorrect, then the Grievor's complaint should be re-investigated by a "newly appointed yet qualified harassment investigator" (p.283, pp.300-302).

PRESENTATION OF GRIEVANCE TO LEVEL II

Submissions

On April 29, 2008, the Grievor received a copy of the Level I decision. He contested it that day (p.306). In his submission of May 8, 2008, he asks the ERC to consider several pages of new material which he sought through ATIP requests on August 14, 2007 and February 15, 2008, and which he obtained on September 18, 2007 and April 3, 2008, respectively. He insists that this material was unavailable at Level I (pp.315-328, p.341-411).

The Grievor also submits that the Level I Adjudicator erred in finding that the Grievor did not prove that harassment took place, that the process followed in the Force's handling of the 2006 complaint was flawed, and that he had suffered prejudice.

The Respondent presented a reply submission on June 12, 2008. He proclaims that subsection 12(3) of the *Commissioner's Standing Orders (Grievances)* SOR/2003-181 (CSO), prohibits the Grievor from relying upon new material at Level II. He observes that "at no time did the Grievor request disclosure of any materials from the Respondent as part of the grievance and more particularly, as part of the ER process". He adds that there was no reason why the Force would not have disclosed such material, had it been sought in accordance with the *Act* (p.417).

The Grievor provided a rebuttal dated July 4, 2008. He contends that subsection 31(4) of the *Act* is not the only permissible vehicle for obtaining grievance-related disclosure. He notes that the Force made him use the ATIP process during the harassment investigation. He insinuates that it would have done the same thing at Early Resolution. He reasons that the "only goal of [the parties] *should be that the* [Commissioner] *receives all relevant information in order to make a well informed decision*" (pp.420-422).

ERC's Receipt of Record and Further Documents

On June 15, 2009, after the ERC had received the grievance record, the Grievor sent additional new materials to the OCG. The ERC received this package on July 2, 2009, sent a copy to the Respondent, and invited him to make a submission. The Respondent did not make a submission.

FINDINGS OF THE ERC

Admissibility of New Evidence at Level II

In general, and under s.12.3 of the *Commissioner's Standing Orders (Grievances)* SOR/2003-181, fresh evidence will not be admissible at Level II unless it could not reasonably have been known by the submitting party at the time of the Level I adjudication. The ERC has also held that in order to be admissible, additional documentation must be relevant, not reasonably available prior to the decision in the first instance and not known to the original decision-maker (see ERC 2800-06-001 (G-407); ERC 2100-06-001 (G-428)).

The record shows that all of the material the Grievor submitted for the first time at Level II was material that was available before the Level I decision was made, and that the Grievor could have asked for as a step in the Level I process. For that reason, I recommend to the Commissioner of the RCMP that he not consider the new material, as it does not meet the above-noted test.

Definition of Harassment

The Level I Adjudicator found that the Grievor had not presented sufficient information and argument for him to be able to reach a conclusion about whether or not the Grievor had been the victim of harassment. I disagree, for the following reasons:

- the Grievor clearly argued that the Respondent misconstrued the definition of "harassment", and that the investigation was both incomplete and unfair (pp.2-13, pp.209-213);
- he tendered his formal written harassment complaint, which identified the incidents (pp.107-110);
- he provided evidence containing background to his complaint (pp.94-106, pp.111-135);
- he submitted the Respondent's harassment decision and the investigation report (pp.14-22, pp.73-93);
- he based his arguments on Treasury Board and RCMP harassment policies (p.1); and,
- the record contains the applicable versions of those policies (pp.44-54, pp.168-181).

Contrary to the finding of the Level I Adjudicator, I find that the Grievor has met his burden of proving on a balance of probabilities that the incidents, as alleged, took place. According to the record, this was not in dispute, and both the investigation report and Respondent's decision appear to take as given that the incidents took place. In particular, the Respondent verified that "[a]*ll of the allegations were reviewed in the writing of the decision*". At no point did he find that an alleged incident had not occurred (pp.16-20, p.97, pp.107-110, p.164). The only question, therefore, was whether or not the incidents met the definition of harassment.

According to the RCMP policy in effect when the Grievor filed his complaint (Chapter XII.17.G.1. of Administration Manual (AM XII.17.G.1)), "harassment" was defined as follows:

> ***Harassment*** *is an improper conduct that is offensive to and directed intentionally or unintentionally at another person or persons in the workplace and which the individual knew or ought reasonably to have known would cause offence or harm. It comprises objectionable acts, comments or displays that demean, belittle or cause personal humiliation or embarrassment, and acts of intimidation or threats. It includes harassment within the meaning of the Canadian Human Rights Act ...* [**bold in original**].

The applicable Treasury Board Policy*, "Prevention and Resolution of Harassment in the Workplace" (2001 TB Policy*) contains the same definition. It also states that serious put-downs and insults, and the display of offensive pictures, generally amount to harassment. It further clarifies that "[w]*hat one person may consider to be proper behaviour, another may believe to be harassment*". Furthermore, it gives direction for determining if behaviour constitutes harassment:

> *Some questions that can help assess whether the behaviour (act, comment or display) constitutes harassment:*
>
> - *Is the behaviour unwelcome or offensive?*
> - *Would a reasonable person view the conduct as unwelcome or offensive?*
> - *Did it demean, belittle or cause personal humiliation or embarrassment?*
> - *Is it a single incident?*
> - *Is it a series of incidents over a period of time?*

I find that the Grievor has met the burden of proving that incidents complained of constituted harassment. In his complaint, he purported that, over time, he was repeatedly a target of numerous unwelcome incidents that caused him undisputed mental harm (eg. anxiety and sadness, Off-Duty Sick) and physical harm (eg. dry heaves). The incidents included threats of violence, demeaning acts (eg. "handicapped" sign in front of car), humiliating acts (eg. "Sunshine Boy" photo), and the display of offensive images (eg. pornographic pictures in his office). The record shows that, on more than one occasion, he made it clear to peers and superiors that the incidents were occurring, and that he wanted them to stop. The record also reveals that his peers and superiors acknowledged what was happening.

Given this information, I conclude that a reasonable observer would be of the opinion that the incidents complained of met the definition of harassment under AM XII.17, and the *2001 TB Policy* (see ERC 3200-07-002 (G-474)).

In my opinion, the Respondent made four errors in reaching the opposite conclusion:

1. Although he acknowledged that there was an objective test for harassment, there is no indication that he applied an objective test in his analysis.

2. He erred by finding there was no harassment on the ground that practical jokes were common at the detachment, and not directed at any one person. Whether or not there were other people harassed in a similar way in this time period is irrelevant.

3. He erred by deducing that there was no harassment because there was no indication of malicious intent. The intention of the harasser is irrelevant - the determination is instead made on the basis of the above-noted objective test.

4. He erred by stating that there was no harassment because those responsible were never identified. While the policies were designed to deal with incidents where an alleged harasser was known, this does not change the facts that the incidents represented harassment, and had to be addressed (see ERC 2800-04-001 (G-367)).

Handling of complaints made at the time alleged incidents occurred

The Grievor contends that over the six years that the incidents took place, he reported them to his supervisor. He says that no action was taken. The supervisor contested this. He stated that each time the Grievor told him about an incident, he gave direction to the members to stop with the practical jokes, and he believed that this resolved the matter.

The Grievor declares that the supervisor was obligated to initiate *Code of Conduct* investigations for each complaint. Firstly, this would not have been possible, as in most cases, there was no identifiable wrongdoer. Secondly, the RCMP and TB harassment policies do not suggest that there must be a formal investigation for every allegation of harassment. The policies allow for some situations to be resolved on a more informal basis.

Although the Grievor contends in this grievance that he was not satisfied with the actions taken by the supervisor from 1998-2004, there is no indication that he ever conveyed this to the supervisor in those years. It is not possible, with the limited information available on this subject in the record, to reach any conclusion about whether or not a more formal investigation should have been conducted at any time during the 1998-2004 period.

However, given the number of allegations over this time frame, it appears to me that the supervisor did not go far enough in trying to put an end to the objectionable conduct. While he stated that he repeatedly told the members in the detachment to stop playing practical jokes, those jokes nevertheless continued over a six-year period. This suggests to me that the supervisor failed in his responsibility under applicable RCMP policy from 1998-2004 to "[t]*ake active supervisory responsibility for establishing and maintaining a work environment supportive of the productivity, career goals, dignity and self-esteem of every employee*" (see AM XII.I.H.2.b.). I also note that when the management team changed in 2004, the new managers quickly succeeded in eliminating the culture of practical jokes in the detachment.

Process followed in the Force's handling of the Grievor's 2006 formal written complaint

I agree with the Level I Adjudicator that when he reviewed the file, there was information missing about some of the steps followed by the Force in its handling of the Grievor's 2006 formal written complaint. However, in my view, there was enough information upon which to make some findings about the process followed.

The record confirmed that at least the following actions were taken after the Grievor reported his allegations to the Respondent in March 2006 (p.87):

- the Respondent ordered that the Grievor be contacted to ensure that all of the concerns he raised were addressed (p.89);
- the Grievor submitted a formal written harassment complaint on April 6, 2006 in the form of an email sent to his supervisor;
- an investigator was assigned and a review was conducted
- the Grievor was interviewed four times and 10 other witnesses were questioned;
- the investigator prepared a final report that was sent to the District Commander, who prepared his analysis for consideration by the Respondent;
- the report was also given to the Human Resources Officer; and,
- the report was forwarded to the Respondent, who made his decision in writing.

The Grievor argues that he was not treated fairly, because the Force did not follow the procedures listed in AM XII.17 and the *2001 TB Policy* when dealing with his complaint. However, as I have stated in other cases, the formal complaint procedures set out in these policies were designed to deal with incidents of harassment where the alleged harasser was known (see ERC 2800-04-001 (G-367), ERC 3200-04-002 (G-377)).

In the Grievor's case, those responsible in most of the allegations were unknown. As a result, his complaint could not be dealt with as per the formal complaint process described in AM XII.17 and the *2001 TB Policy*. Nevertheless, the Respondent still had an obligation to address the incidents.

As stated in the *2001 TB Policy*, managers "are expected to address any alleged harassment of which they are aware, whether or not a complaint has been made".

In my view, the record shows that the Respondent took the matter seriously by ordering that the Grievor be contacted to ensure that all of the concerns he raised were addressed. As a result, a review was conducted, the Grievor was given four opportunities to make his views known, a report was prepared, the Respondent made a decision and provided written reasons.

The Grievor argues that the Respondent's decision did not capture all the incidents. I find that it was not necessary for the Respondent to specifically address each allegation in his written decision on the harassment complaint. I also find that the record shows that he considered all the relevant information in deciding what action to take.

The Grievor further argues that it was wrong for the Force to mention his own *Code of Conduct* matter, and related discipline, in the review of his harassment complaint. I agree that this was an irrelevant consideration, but I do not find that the Grievor was prejudiced in any way by it being mentioned. Firstly, it was the Grievor himself who first drew specific attention to his *Code of Conduct* investigation by alluding to it in his formal written harassment complaint (p.109). Secondly, I find no indication on the record that the mention of the Grievor's *Code of Conduct* matter had any bearing on the Respondent's decision in the harassment complaint.

However, while there were positive aspects to the Force's response to the Grievor's allegations as above-noted, there were also shortcomings. First, as was recognized by both parties, the Grievor should have been given a chance to review his written statements before the investigation report was finalized. Second, in the interest of fairness, the Grievor should have had a chance to respond to the investigation report prior to the Respondent reaching his final decision. Third, as was noted by the Level I Adjudicator, it appears that the investigation may have been less than complete in that it relied on unreported telephone conversations with witnesses rather than statements.

Proof of Prejudice

I believe that the Level I Adjudicator erred when he found that the grievance failed because the Grievor had not proven that he suffered prejudice. The Level I Adjudicator explained (pp.300-302):

> *Establishing prejudice under the "substantive" analysis module of a grievance is akin to, but also very different from, the requirement to establish aggrievement required under the "standing" analysis. …* [T]*he test for a grievor to illustrate they have been aggrieved, in order to establish standing, is relatively low. In other words, during that portion of the process a grievor is required to do little more than indicate, and provide minimal factual underpinning to establish, that they have been aggrieved. Once one reaches this stage of the analysis, that portion of the grievance dealing with the merit of a grievor's argument(s) the test goes beyond the standing requirement of merely asserting aggrievement. …*
>
> *In this current portion of the Grievance analysis, therefore, it assists the decision maker to be able to ascertain whether the Grievor has established, on a balance of probabilities, that the decision, act or omission being questioned has prejudiced him in some manner, that there has been damage or detriment to a legal right or claim to which he is entitled. ...*
>
> *I am satisfied that the Grievor has not demonstrated that he has been prejudiced by the Harassment Decision. Specifically, the Grievor has provided no evidence or even any argument of being aggrieved as a result of the Harassment Decision.*

The Grievor urges that the Force misapplied the harassment policies in investigating and deciding his complaint. As a result, he feels he was prejudiced *"professionally, physically and mentally*" (pp.332-333). The Respondent did not take a position on this point.

I find that the record shows that the Grievor was indeed prejudiced by the unjustified denial of his harassment complaint. The ERC has found, and the Commissioner of the RCMP has agreed, that members were prejudiced by: the denial of a harassment complaint (see ERC 2000-97-001 (G-216)], the way a complaint process unfolded (see ERC 2900-06-002 (G-405)), and the handling of a harassment allegation (see ERC 2900-07-008 (G-437)).

Other matters raised by the Grievor

The Grievor alleges that one person involved in responding to his harassment complaint was biased because he was also working on the Grievor's *Code of Conduct* matter at the same time. This in itself is not enough to raise a bias concern, and nothing else in the file suggests that there was an appearance of bias surrounding this person, or any other who played a role in the handling of the

Grievor's 2006 complaint.

In his communications at Level II with the OCG, the Grievor suggested that he was taken by surprise when the Level I Adjudicator ruled on the merits (p.313). He stated that he believed that the Level I decision would deal only with the Respondent's request for a ruling on what should happen in regard to not having a chance to review his written statements. In my view, the record does not support the Grievor's contention. His Level I submission dealt with all matters, including the merits of the grievance. Furthermore, he did not raise this argument when given a chance to reply to the Respondent's Level I submission, which also dealt with all matters, including the merits.

Conclusion

I find that the Respondent erred by finding that the alleged incidents did not fall within the definition of harassment, and that there were shortcomings in the process followed to address the Grievor's complaint. I therefore recommend to the Commissioner of the RCMP that he allow the grievance. I further recommend that he offer the redress sought by the Grievor, that being an "admission that [the Grievor] *was subjected to workplace harassment by various members while* [at the detachment]" (p.1), and that he apologize to the Grievor for the fact that the harassment investigation and decision in his case were inconsistent with policy.

I note that the Level I Adjudicator concluded that if his decision to deny the grievance was incorrect, then the Grievor's harassment complaint should be re-investigated by a newly appointed harassment investigator (p.302). In my view, such a remedy is impractical in this particular case, as the Grievor's complaint is roughly five years old, and some of his allegations date back to 1998 (p.86).

RECOMMENDATIONS

I recommend to the Commissioner of the RCMP that he allow the grievance, acknowledge that the

Grievor was subjected to workplace harassment during the period from 1998-2004, and apologize to the Grievor for the fact that the harassment investigation and decision in his case were inconsistent with applicable policies.

Catherine Ebbs
Chair

Ottawa, May 12, 2011